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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON FULLER,

Defendant and Appellant.

A147218

(Humboldt County  
Super. Ct. No. CR 1503454)

Defendant Aaron Fuller appeals from a judgment after he pled guilty to willfully evading an officer while operating a motor vehicle, a felony violation of Vehicle Code section 2800.2, subdivision (a), and driving under the influence of a drug, a misdemeanor violation of Vehicle Code section 23152, subdivision (e).<sup>1</sup> Defendant's court-appointed counsel has filed a brief seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant has been informed of his right to file supplemental briefing, and he has not done so. After our independent review of the record, we find no arguable issues and affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

On July 29, 2015, the Humboldt County District Attorney filed a complaint charging defendant with six offenses all arising out of a high speed car chase occurring on the streets of Eureka and on Highway 101 in the early morning hours on July 25, 2015. Defendant was charged with one felony count of willfully evading an officer while

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<sup>1</sup> All statutory references are to the Vehicle Code, unless otherwise stated.

operating a motor vehicle (§ 2800.2, subd. (a)), with a prior serious or violent felony or juvenile adjudication (Pen. Code, § 667, subds. (b) through (i)); and five misdemeanors, including driving under the influence of a drug (§ 23152, subd. (e)) with an allegation of excessive rate of speed (§ 23582); being under the influence of methamphetamine (Health & Saf. Code, § 11550, subd. (a)); possession of paraphernalia for ingesting a controlled substances (Health & Saf. Code, § 11364, subd. (a)); resisting, delaying and obstructing a police officer in the performance of his duties (Pen. Code, § 148, subd. (a)(1)); and driving without a valid license (§ 12500, subd. (a)).

Defendant filed a motion to suppress evidence under Penal Code section 1538.5, which was heard at the time of the preliminary hearing. The evidence showed that two California Highway Patrol (CHP) officers, Price and Gunderson, were in a marked CHP car at about 3:17 a.m. on July 25, 2015, when they saw a Mazda approach them. As it approached, they could not see a front license plate on the car, which Officer Price knew was a violation of section 5201, subdivision (a) which requires that a license be mounted on the front of a vehicle and maintained such that it is clearly visible.<sup>2</sup> Price started to do a u-turn to initiate an “enforcement stop,” and then saw, as the Mazda passed him, that the rear license plate was not illuminated, as is required by section 24601, so that the rear license plate is visible at a minimum of 50 feet.<sup>3</sup> At the point he made this observation, Officer Price was at most 30 feet away from the Mazda.

Price then tried to perform a traffic stop, activating his lights and eventually his siren. Defendant did not stop. Instead, he led the CHP officers on a high speed chase that lasted for about 13 minutes, first through residential streets where he reached 80 and

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<sup>2</sup> Section 5201, subdivision (a) states in pertinent part, “License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging, shall be mounted in a position so as to be clearly visible, and so that the characters are upright and display from left to right, and shall be maintained in a condition so as to be clearly legible.”

<sup>3</sup> Section 24601 states in pertinent part, “Either the taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear license plate during darkness and render it clearly legible from a distance of 50 feet to the rear.”

100 miles per hour, drove through stop signs, and went the wrong way on a one-way street, and then on Highway 101, where defendant reached speeds of 110 miles per hour. Defendant eventually exited Highway 101 and collided with a metal cattle fence. Officer Price did not see the rear license plate illuminated after the collision. Defendant ran away from scene, and Officer Price gave chase. Eventually defendant fell to the ground and lay there. Defendant was given his Miranda rights and spoke to the officers. When he was asked why he did not stop, even as the CHP activated their lights and siren, defendant said he did not have a driver's license or insurance. Based on defendant's appearance and affect, Price concluded that defendant had been driving under the influence of a drug. Defendant said he had methamphetamine in the center console of the car. Before towing the Mazda, Officer Gunderson conducted an inventory search of the car where he found a glass smoking pipe in the console, with a burnt residue in the bowl end.

Before conducting the inventory search, Gunderson walked around the Mazda, which was then surrounded by tall grass. Even within four feet of the car, Officer Gunderson testified that he did not see a front license plate on the Mazda.

Sometime after the high speed chase on July 25, Officer Price saw photographs of the Mazda, which showed that there was in fact a front license plate on the car. The photographs were admitted in evidence. Officer Price testified that when he saw the photograph, "I did recognize that halfway up the license plate it was bent inward, and there is a—looks like a[n] air vent at the bottom of his bumper and/or a gap or opening in the front of his vehicle. And it looked as though the license plate was bent backward in that connection, and it was the paint on the front [of the license plate] it seemed to be chipped away and faded, and it was very, very, dirty." Price also saw a photograph indicating that the rear license plate lamps were working. Officer Gunderson also saw these photographs after the incident, and testified he was "surprised" by them, because he had not seen the front or rear license plates on the evening in question when defendant was driving, even when Gunderson was about 30 feet from the Mazda.

The trial court denied the motion to suppress, finding the evidence was sufficient to conclude that the officers reasonably believed that they had observed Vehicle Code violations; this gave them reasonable suspicion to stop defendant's car to investigate the violations. The trial court described the photograph of the rear license plate: "It's not black, but it is dark. I can easily see how, even with the lamps lit, it wouldn't look lit to somebody from behind. Now, I think that is reasonable suspicion to pull him over and look." The trial court then described the front license plate photographs: The license plate "is bent. You know, when you look at the picture, even with the light, it's clearly not legible. I mean, it's there, but it is bent. It is not very legible." The trial court repeatedly stated that it found the officers' testimony credible; at 3:15 a.m., in darkened conditions, it appeared to them that there was no front license plate, and the rear license plate was not illuminated.

Describing what might have been, had defendant not led the officers on a high speed chase, the court said, "[The officers] had a reasonable suspicion. They turn on the lights, they pull him over, and oh, he has got the lamps. He has got a front license plate. You need to get that dent taken out of there so it's more visible, and send him on his way. But he runs. And at that point they have every right to pull him over."<sup>4</sup> The court continued, "And they have every right to make a U-turn and get behind him." Describing the evidence, the court stated, "When I look at . . . the pictures, I can understand at 3:15 in the morning, it's dark and you're on Broadway. A car goes by you with its headlights on. You don't see the license plate. . . . [¶] You turn around. Whether that's reasonable suspicion to stop doesn't matter, really. They don't see it, so they turn around. When they turn around, they don't see the rear license plate illumination. And that, to me, is highly reasonable when I look at the condition of that plate and then—how dark it is. When I don't see illumination at 3:15 in the morning, pull them over and look—that's reasonable suspicion—to see if it's lit. Even though it's not noticeable from the required

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<sup>4</sup> Even defense counsel did not dispute this point: ("I agree. And your Honor, at that point, absolutely.")

distance, because the license plate is in such bad shape. You might say something, and you let them go, But its certainly reasonable suspicion to pull them over to investigate. And that's all they need . . . the fact that is sufficient to lead an officer to reasonably believe there was a violation. Reasonably believe. I think that is reasonable belief. When I look at the condition of that license plate, that's reason to believe."

The trial court then held defendant to answer. Shortly, thereafter, the district attorney filed an information charging defendant with the same offenses and allegations that had been charged in the complaint.

Defendant waived his constitutional rights and entered an open guilty plea to count 1, the felony violation of section 28002, subdivision (a), willfully evading an officer while operating a motor vehicle; and count 2, the misdemeanor violation of driving under the influence of a drug (§ 23152, subd. (e)). The balance of the counts and special allegations were dismissed.

At the sentencing hearing, defendant's counsel asked the trial court to impose the middle term of two years on the felony, notwithstanding the probation officer's recommendation that defendant receive the aggravated term of three years in state prison. Before imposing sentence, the trial court found there were no unusual circumstances necessary to grant probation,<sup>5</sup> and that the aggravating circumstances outweighed any mitigating factors. The trial court sentenced defendant to the upper term of three years in state prison for the section 2800.2 conviction. For the misdemeanor conviction of driving under the influence of a drug, defendant was sentenced to a concurrent six-month term. Defendant was ordered to pay a restitution fine of \$600, criminal conviction assessment fees, and awarded 238 days of pre-sentence credits.

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<sup>5</sup> Defendant had a two prior felony convictions in Oregon: one in 2005 involving hit and run with injury, and the other for second degree robbery in March 2007. As such, he was ineligible for probation, "[e]xcept in unusual cases where the interests of justice would best be served if the person is granted probation." (Pen. Code, §§ 1203, subd. (e); 1203, subd. (e)(4).)

Defendant filed a timely notice of appeal challenging the denial of the motion to suppress evidence under Penal Code section 1538.5.

### **REVIEW**

We have reviewed the record on appeal for any arguable issues. Defendant was sentenced after his guilty plea, and did not obtain a certificate of probable cause. Any issues as to the validity of his plea are not before us. (Pen. Code, § 1237.5.)

The trial court properly denied the motion to suppress. The evidence showed that the officers reasonably believed they had observed violations of sections 5201, subdivision (a) and 24601. Although “warrantless searches are per se unreasonable unless the search falls within a recognized exception,” one such exception is “an investigatory stop of a vehicle based upon an objectively reasonable suspicion that the person stopped has broken the law.” (*People v. Reyes* (2011) 196 Cal.App.4th 856, 859.) The trial court did not err in concluding that it was reasonable for the police officers to attempt to effect a traffic stop to investigate what they reasonably believed were defendant’s violations of the Vehicle Code.

Defendant was represented by competent counsel who at all times acted to protect his rights and interests.

The sentence imposed is authorized by law.

In any event, we conclude there are no arguable issues within the meaning of *People v. Wende, supra*, 25 Cal.3d 436.

### **DISPOSITION**

The judgment is affirmed.

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Miller, J.

We concur:

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Kline, P.J.

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Stewart, J.